U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 24 2007
EAC 04 191 52247

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mary Gleason

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. On the Form I-140 petition, the petitioner identifies herself as an "Engineer Technologist" and "Chemist." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner holds an advanced degree, but has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The sole issue raised in the director's decision is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove

> the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner's initial submission was skeletal, with no supporting documentation. Following a request for evidence, the petitioner supplemented the record in August 2005.

The petitioner describes her work in an introductory letter:

> I have very rich experience as [a] technologist and as [a] manager. From May 2001 to September 2003 I was working at Permanent Mission of Georgia to the United Nations as chief of agriculture department. I hope that you understand what it means [to hold] such [a] high position. I was chosen from [a] very small number of extremely experienced technologists and managers.

According to a letter from Ambassador [redacted] the petitioner "was employed at the Permanent Mission of Georgia to the United Nations from 6 May 2001 till 30 September 2003 as a Chef." Other letters attest to the petitioner's earlier work as a food technologist and microbiologist at factories that produced candies, jellies, and juices.

The petitioner continues:

> In the United States, I hope I can find appropriate development of my career. I [wrote] to some companies and received some positive response from them.
>
> I have the unique knowledge of old recipes of sweeties (e.g. jams, candies, juices and etc.). Some recipes are 400-500 years old and they are the heritage of my ancestors. I have the goal to patent the best of them in the United States.

The petitioner submits only one piece of evidence relating to the response of United States-based companies. An electronic mail message from the [redacted]ompany informed the petitioner that the company has "no available positions commensurate with [the petitioner's] qualifications and experience."

> I founded a small private company and simultaneously of the main goals, I am trying to provide some service to elderly people. It is a good and honored job that helps me maintain my financial condition on average level, but it is only second line of my activity.

The petitioner submits letters from members of a New Jersey family, relating to the petitioner's provision of home health care services to a 96-year-old woman in that family. The petitioner also submits a copy of her Home Health Aide certificate, dated January 6, 2005. Her contract with the family in New Jersey is dated April 15, 2005. The petitioner filed the petition on June 5, 2004, and therefore she was evidently not yet a qualified home health aide at the time of filing. Therefore, even if being a certified home health aide was a powerful argument in favor of granting a national interest waiver (which it is not), she was not a certified home health aide at the time of filing and so that credential could not be a favorable factor. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that a beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The director denied the petition, stating that the petitioner's work as a home health aide and her "goal to patent jam recipes" are very limited in scope, and will not serve the national interest to any discernible extent. On appeal, the petitioner argues that her work as a home health aide is "secondary" to her intended work with "sweeties." The petitioner repeats the assertion that "[s]ome recipes are 400-500 years old," and that she seeks "to patent the best of them in the United States."

The petitioner does not show that United States patent law permits a recipe to be patented (when that recipe simply involves combining widely available ingredients using methods in widespread use), let alone that she would have any intellectual property rights regarding a recipe that has been in use for centuries. The petitioner states that she has developed new recipes based on the old ones, and that she hopes her "research and new recipes will be important for [the] food industry in the United States on the national level." The petitioner does not elaborate. It cannot suffice for the petitioner simply to hope for some unspecified national impact to arise from her work; this is nothing more than vague speculation.

While the petitioner has shown that she has considerable experience in various occupations in the food industry, she has not shown that she, as an individual, has significantly shaped that industry in Georgia, or that she is likely to do so in the United States. Her familiarity with centuries-old folk recipes is not, on its face, grounds for the special immigration benefit of a national interest waiver.

Beyond the decision of the director, review of the record reveals an additional issue of concern. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683

(9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petitioner seeks classification as a member of the professions holding an advanced degree. The director, in the notice of decision, acknowledged that the petitioner "is the holder of an advanced degree." While we do not contest this finding, not every "holder of an advanced degree" qualifies as a member of the professions. 8 C.F.R. § 204.5(k)(2) defines "profession" as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. The petitioner's identified occupation is not among those listed at section 101(a)(32) of the Act, and she has not shown that following old recipes, and formulating new ones, requires at least a bachelor's degree. While the petitioner calls herself an "engineer technologist" and "chemist," she has not shown that her proposed venture would require her to perform the duties normally associated with those occupations; status as a professional relies on more than one's job title.

Because the petitioner has not shown that she seeks to engage in a profession in the United States, we cannot find that the petitioner qualifies as a member of the professions. As such, the petitioner has not established eligibility as a member of the professions holding an advanced degree.

On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States. The petitioner has also failed to establish eligibility for the underlying classification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.